

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MASSACHUSETTS**

Ina Steiner,
David Steiner,
Steiner Associates, LLC,
(Publisher of EcommerceBytes)

Plaintiffs,

No. 21-CV-11181-DPW

ORAL ARGUMENT REQUESTED

vs.

eBay, Inc.,
Progressive F.O.R.C.E. Concepts, LLC
Devin Wenig,
Steve Wymer,
James Baugh,
David Harville,
Brian Gilbert,
Stephanie Popp,
Stephanie Stockwell,
Veronica Zea,
Philip Cooke,
John and Jane DOE,

Defendants.

DEFENDANT PHILIP COOKE’S MOTION TO DISMISS THE COMPLAINT

Defendant Philip Cooke (“Mr. Cooke”) moves to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). As grounds for this Motion, Mr. Cooke states:

1. Plaintiffs Ina Steiner, David Steiner, and Steiner Associates, LLC (collectively, “Plaintiffs”) fail to state a claim for trespass because they do not allege any facts to show that Mr. Cooke entered their property or damaged it in any way.

2. Plaintiffs’ claim for vandalism fails because they do not allege any facts to demonstrate that Mr. Cooke defaced their property.

3. Plaintiffs fail to state a claim for stalking because they do not allege sufficient facts to show that Mr. Cooke was engaged in a pattern of harassing conduct, that he intended to place Plaintiffs in reasonable fear for their safety, or that they ever demanded that the activity cease.

4. Plaintiffs' false imprisonment claim must be dismissed because Plaintiffs do not allege sufficient facts to show that Mr. Cooke intentionally confined them to their home.

5. The claim for ratification fails because Plaintiffs do not allege that Mr. Cooke was in a principal-agent relationship with any of the other Defendants.

6. Plaintiffs' claim under Section 11 of Chapter 93A fails because Plaintiffs do not adequately allege facts to show that they were engaged in a commercial transaction in trade or commerce or that they suffered loss of money or property.

7. Plaintiffs cannot state a claim for intentional interference with business relationships because they fail to allege facts to show an advantageous business relationship and Mr. Cooke's knowledge of it.

8. The defamation claim fails because Plaintiffs do not allege sufficient facts to show that Mr. Cooke made statements that could damage Plaintiffs' reputation in the community or that they suffered economic harm.

9. The claim under the Racketeer Influence and Corrupt Organizations Act fails because Plaintiffs lack standing, fail to sufficiently allege predicate racketeering acts or a pattern of racketing activity, and fail to adequately allege that Mr. Cooke participated in the operation or management of the enterprise.

10. Plaintiffs' civil conspiracy claim must be dismissed because they do not adequately allege that Mr. Cooke agreed to commit the acts alleged in the Complaint or committed a tortious act in furtherance of the agreement.

11. The claim under the Massachusetts Civil Rights Act fails because Plaintiffs do not allege facts to show that Mr. Cooke threatened, intimidated, or coerced them.

12. The intentional infliction of emotional distress claim fails because Plaintiffs fail to sufficiently allege that Mr. Cooke intended to inflict emotional distress and that his conduct was extreme and outrageous.

Further grounds for this Motion are set forth in the accompanying Memorandum of Law.

WHEREFORE, Mr. Cooke moves that this Court:

1. Dismiss the Complaint in its entirety and with prejudice; and
2. Grant such other further relief as is fair and just.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Mr. Cooke respectfully requests that oral argument be scheduled on this Motion.

LOCAL RULE 7.1 CERTIFICATION

On October 27, 2021, counsel for Mr. Cooke, Susan G. Winkler, counsel conferred with Plaintiffs' counsel, Rosemary Scapicchio, in an attempt in good faith to resolve or narrow the issues presented in this Motion. The parties were unable to resolve or narrow the issues.

/s/ Christina N. Lindberg
Christina N. Lindberg

Dated: October 29, 2021

Respectfully submitted,

PHILIP COOKE

By his attorneys,

/s/ Christina N. Lindberg

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the ECF system on October 29, 2021 and will be sent electronically to the registered participants on the Notice of Electronic Filing and paper copies will be sent to any non-registered participants.

/s/ Christina N. Lindberg

Christina N. Lindberg